

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

WINSTON C. ROBINSON,

Defendant-Appellee.

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UNPUBLISHED

May 10, 2002

No. 230983

Wayne Circuit Court

LC No. 00-002363

Before: Holbrook, Jr., P.J., and Cavanagh and R. S. Gribbs\*, JJ.

GRIBBS, J. (*dissenting*).

I respectfully dissent. The trial court, by dismissing the charges of fleeing and eluding and of resisting and obstructing a police officer, usurped the province of the jury when it decided the factual questions of defendant's guilt and which witness was the more credible. The trial court's decision encompassed not just whether evidence should be suppressed, but whether defendant was guilty of the charges against him. Defendants have a right to have a jury make that determination; I would vacate the order to dismiss and remand for a proper trial on the merits.

The majority mischaracterizes the prosecution's argument when it reiterates defendant's assertion that the prosecution did not contest the trial court's factual finding that defendant did not fail to obey the stop sign. The prosecution's argument is perhaps not as clearly worded as it could be, but it is clear enough that the matter in dispute is not simply the remedy granted but, rather, that the trial court had no authority to expand its findings regarding suppression of evidence and thereafter decide what it had already determined was a jury question: defendant's guilt. Because the record indicates that the trial court dismissed the charges of fleeing and eluding and of resisting and obstructing for improper reasons, the court erred in dismissing the case.

The trial court's decision to dismiss a case is reviewed for an abuse of discretion. *People v Adams*, 232 Mich App 128, 132; 591 NW2d 44 (1998). The court has authority to dismiss over prosecutorial objection only when permitted by statute, when there is an insufficiency of evidence, or when required by certain constitutional guarantees. *People v Sierb*, 219 Mich App 127, 133; 555 NW2d 728 (1996), rev'd on other grounds 456 Mich 519 (1998); *People v*

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

*Leonard*, 144 Mich App 492, 495; 375 NW2d 745 (1985); *People v Morris*, 77 Mich App 561, 563; 258 NW2d 559 (1977).

In the present case, it should first be noted that defendant brought a motion for directed verdict on the charge of fleeing and eluding at the close of the prosecutor's proofs; this was denied by the trial court, stating, "I am not going to say that a reasonable person couldn't find that he was fleeing and eluding." At the end of trial, the court gave the jurors a verdict form only for the fleeing and eluding charge, intending to give them a second form with the remaining charges when they returned a verdict on the first charge.<sup>1</sup> After several hours, the jury informed the court it was "deadlocked" on the fleeing and eluding count. The court gave the jury transcripts of testimony and several more hours to deliberate, but it remained deadlocked and a mistrial was declared. About seven weeks later, the trial court held an evidentiary hearing to consider defendant's motion to suppress and motion to dismiss. The court concluded the hearing by denying the motion to dismiss and orally putting its findings and reasoning on the record. It noted that the case was a "credibility contest" and found that a "reasonable jury could find the elements of the crime of fleeing and eluding were proven beyond a reasonable doubt." The court did not at that time decide the motion to suppress, saying, "I will let you know when I have reached a decision on the Motion to Suppress." Seven weeks later, with no further participation of the parties, the court dictated from the bench its opinion on the motion to suppress. It first noted that the police officers testified that defendant ran the stop sign and that the roads were slippery that night. The court then stated that it found "the following testimony" not credible, and described the officers' testimony about events *after* the alleged failure to stop. The court found defendant's civilian witnesses more believable than the officers on the matter of defendant's alleged resisting arrest, and concluded:

"This testimony causes this Court to doubt the creditability [sic] and veracity of the officers concerning the Defendant's failure to stop at the stop sign and failure to stop [when] signaled to do so. The prosecution has not established by a preponderance of the evidence that [defendant] failed to stop at Henry Ruff Road and Avondale. Since the Court finds that [defendant] did not disobey the stop sign, the police had no probable cause to stop him. I further find that [defendant] did not flee and elude the police. . . . Since the police had no probable cause to stop the Defendant, the evidence that he did not have a valid driver's license and that marijuana was found in the car are suppressed and the charges against the Defendant are dismissed."

Although an assessment of credibility is appropriate when the trial court is deciding whether to suppress evidence, the court may not then use its factual findings regarding suppression to conduct a spontaneous "bench trial" on defendant's charged offenses. *People v Drew*, 26 Mich App 337, 339-340; 182 NW2d 566 (1970); *People v Hummel*, 19 Mich App 266, 271-272; 172 NW2d 550 (1969) (quoting *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965)); see also *Rogers v Richmond*, 365 US 534, 544, 81 S Ct 735, 5 L Ed 2d 760 (1961). In *Hummel*, where the suppression concerned the defendant's statement, this Court

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<sup>1</sup> The prosecutor objected to this "bifurcated" verdict form at the time it was to be given and at the time the mistrial was declared.

said, “It was error for the trial judge to allow the issue of guilt to enter into the evidentiary hearing on the issue of voluntariness of the defendant’s statements and confessions.” *Hummel*, *supra* at 272. The trial court in the present case did exactly what *Hummel* decried, allowing the issue of guilt to enter into the evidentiary hearing. Furthermore, although lawfulness of an arrest is generally a question of law to be decided by the trial court, when lawful arrest is an element of the charged offense (as in this case), it becomes a question of fact for the jury. *People v Dalton*, 155 Mich App 591, 598; 400 NW2d 689 (1986). Thus, the evidence of defendant’s guilt should not have been weighed and decided by the trial court.

The majority correctly notes that finding probable cause is properly within the realm of the trial court. However, the trial court in this case had already reached the legal conclusion that a “reasonable jury could find the elements of the crime of fleeing and eluding were proven beyond a reasonable doubt,” and entered an order denying defendant’s motion for directed verdict of acquittal. Without any further testimony or argument, the court determined seven weeks later that, regardless of the existence of a jury question, there was no probable cause to support the charge and dismissed it, effectively reversing its own, earlier order. The court rules authorize trial courts to alter their verdicts prior to entry of judgment based on a substantive mistake. MCR 6.435(B).<sup>2</sup> However, a substantive mistake is a conclusion or decision that is erroneous because it is based on a mistaken belief in the facts or the applicable law. *People v Jones*, 203 Mich App 74, 80; 512 NW2d 26 (1993). In this case, as in *Jones*, “MCR 6.435 is inapplicable because the trial judge did not base [her] decision on a mistaken belief in the facts or law. Rather, [she] reevaluated the evidence presented.” *Id.* Public policy discourages altering judicial decisions in order to promote their finality and prevent potential abuses. *Id.* at 82. Thus, the trial court had no proper basis for reversing its earlier decision that the prosecution had presented sufficient facts to support a jury question.

Defendant does not clearly state in his motion to suppress what specific evidence he sought to suppress. Defendant was pursued by police after allegedly running a stop sign, then allegedly beaten when he got out of the car and allegedly resisted arrest. A search of the borrowed car he had been driving produced a bag of marijuana, and a check of his driver’s license revealed that it was suspended. Before trial, defendant filed a motion to quash bindover and to suppress the marijuana and “any evidence” that defendant was driving with a suspended license; this was denied by the trial court without elaboration. In his post-trial motion, defendant was less specific, simply arguing that because the police made an “invalid traffic stop,” “any charges/fruits of such illegal/inappropriate police conduct” should be dismissed. Even when taken at its broadest, none of the evidence ultimately suppressed by the trial court was relevant to the charges of fleeing and eluding and of resisting and obstructing because it was obtained *after* the attempted stop. It defies logic that evidence sufficient to support the prosecution under a motion for directed verdict could become insufficient when none of that evidence was suppressed and the test is the same.<sup>3</sup>

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<sup>2</sup> MCR 6.435(B) Substantive Mistakes. After giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous.

<sup>3</sup> The test for sufficiency is taking the evidence in the light most favorable to the prosecutor to  
(continued...)

The trial court, in exercising its discretion, was limited to three bases for dismissal: statutory permission, insufficient evidence, or constitutional guarantees. None of these was present in this case. Nor did the trial court make a substantive mistake permitting it to reverse its earlier determination that a sufficient question of fact remained. I therefore conclude that the court abused its discretion in dismissing the challenged charges. I would vacate the order dismissing the case and remand for trial.

/s/ Roman S. Gribbs

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(...continued)

determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). The test for granting a directed verdict of acquittal is the same. *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997).